

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI
SPECIAL BENCH

Item 1

CP/85(MB)2023

CORAM:

SH. SHYAM BABU GAUTAM
HON'BLE MEMBER (T)

SH. KISHORE VEMULAPALLI
HON'BLE MEMBER (J)

ORDER SHEET OF THE HEARING ON 14.03.2023

**NAME OF THE PARTIES: - HUBTOWN LIMITED VS JOYOUS
HOUSING LIMITED and Ors.**

Appearance (via video-conference):

For the Applicant : Mr. Navroz Seervai, Sr. Advocate a/w
Mr. Prateek Seksaria, Sr. Advocate a/w
Mr. Yash Momaya, Ms. Aneesa Cheema,
Mr. Nishant Chotani, Mr. Sajit Suvarna,
Mr. Nirav Shah, Ms. Shivani Khanwilkar,
Ms. Parini Shah, Advocate i/b DSK Legal

For the R2 : Mr. Janak Dwarkadas, Sr. Advocate along
with Mr. Rajeev Nayyar, Sr. Advocate,
Mr. Kunal Dwarkadas, Ms. Ruby Singh
Ahuja, Mr. Rustam Mulla, Mr. Vishal
Gehrana, Ms. Hancy Maini, Mr. Ishan
Gaur, Ms. Aakriti Vohra, Mr. Ashutosh
Shukla, Mr. Praveen Bahadur, Mr.
Harshad Gada, Mr. Sohan Kinkhabwala
i/b Desai Desai Carrimjee & Mulla

For R3, R6 & R7 : Mr. Nimay Dave, Advocate

For R4 & R5 : Mr. Gaurav Joshi, Sr. Advocate a/w Ms.

Ruby Singh Ahuja, Mr. Rustam Mulla, Mr. Vishal Gehrana, Ms. Hancy Maini, Mr. Ishan Gaur, Ms. Aakriti Vohra, Mr. Ashutosh Shukla, Mr. Praveen Bahadur, Mr. Harshad Gada, Mr. Sohan Kinkhabwala i/b Desai Desai Carrimjee & Mulla

For R8 to R13 : Mr. Ravi Kadam, Sr. Advocate
a/w Mr. Sunip Sen and Mr. Rohan Kadam
i/b Mr. Yogesh Chawak, Mr. Anuj
Athalye and Ms. Shivani Vyas from
Legasis Partners

For R14 & R15 : Mr. Nausher Kohli, Advocate along with
Mayur Shetty, Kavita Brid-Chavan,
Unnati Vijay i/b Rajani Associates

Section 241(1) & 242(4) of the Companies Act, 2013

ORDER

1. The Petitioner in the captioned Petition is alleging Oppression and Mismanagement against the majority Shareholders of the Respondent No.1 Company i.e. Joyous Housing Limited. At this stage in order to protect its interest the Petitioner prays for the following interim reliefs:

A. That pending hearing and final disposal of the present petition, this Tribunal be pleased to stay the operation, implementation and effect of the purported decisions passed at the illegal gathering on March 9, 2023 for removal of the nominee directors of the Petitioner and

Respondent Nos. 2 and 3 and appointment of the Respondent Nos. 8 to 13;

- B. That pending the hearing and final disposal of this Petition, an order restraining the Respondent No.2 and 3 and/or Respondent No.4 to 7 and/or Respondent No. 8 to 13 from taking any steps in any manner whatsoever to i) alter the capital structure of the Respondent No.1 Company, and/or ii) alter the composition of board of directors of Respondent No.1 Company and/or iii) amend any constitution documents viz. AOA or the MOA of Respondent No.1 Company, in furtherance of the purported decisions passed at the gathering dated 09.03.2023, or
- C. That pending the hearing and final disposal of this Petition, Respondent No. 2 to 13 be restrained by themselves or any person acting through or under them or as their nominee or agent from in any manner whatsoever doing any act, deed or thing which directly or indirectly has the effect of altering and /or effecting any change to the ownership or the shareholding of the Petitioner in the Respondent No.1 Company or the Register of members of Respondent No.1 Company or converting the shareholding of the Petitioner in dematerialized form at the behest of any person whomsoever.

- D. That pending the hearing and final disposal of the present petition, Respondent Nos. 2 to 13 be directed to forthwith disclose on oath all the details with respect to the purported business transacted and/or the purported decisions taken at the illegal gathering and/or any steps taken on the basis thereof and in furtherance thereof.
- E. That pending hearing and final disposal of the present petition, this Tribunal be pleased to stay the operation, implementation and effect of anything done in furtherance of the illegal gathering and / or the purported decision passed thereat including but not limited to any statutory filings purporting to reflect a change in the Board of Directors of Respondent No. 1 Company or the removal of the nominee directors of the Petitioner as Directors and/or the appointment of Respondent Nos. 8 to 13 as directors of Respondent No. 1 Company and in this regard consequential directions be issued to the concerned authorities;
- F. That pending hearing and final disposal of the present petition, this Tribunal be pleased to restrain the Respondent Nos. 2 to 13 by themselves or through their agents, proxies or anybody claiming through or under them by an order and injunction from in any manner calling for any meeting of the Respondent No. 1 Company or the

Board of Directors without the prior permission of this Tribunal and/or the participation of the Petitioner and the Respondent Nos. 14 and 15.

G. For such further and other appropriate orders, reliefs and directions as this Tribunal may deem fit and proper in the facts and circumstances of this case.

2. At this stage, the Petitioner has prayed for reliefs enumerated in Clause B and C of paragraph 1 hereinabove.
3. The Ld. Senior Counsel Mr. Navroz Seervai appearing on behalf of the Petitioner submits that the Petitioner is 25% Shareholder in Respondent No.1 Company and Respondent No. 2 and 3 hold 37.5% equity shares each in Respondent No.1 Company. The Petitioner has challenged the gathering held on 09.03.2023 between Respondent No. 2 and 3 immediately after a requisitioned Extraordinary General Meeting of even date, of the Respondent No.1 was over, the Petitioner apprehends that at the aforesaid gathering certain purported decisions would have been passed to remove nominee directors of the Petitioners i.e. Respondent No. 14 and 15 from the board of the Respondent No.1 company.
4. It is submitted that the Respondent No.1 Company without the presence of and the affirmative vote of the Petitioner have attempted to change the

- composition of the Board of Directors of the Respondent No.1 Company.
5. Meanwhile, the Ld. Senior Counsel for the Petitioner has indicated that Respondent No.2 on behalf of the Respondent No.1 Company approached PNB Housing Finance Limited (**“PNB Housing”**) to avail finance for construction project. PNB Housing has sanctioned a loan facility to the Respondent No.1 Company to the tune Rs. 800 Crores. To secure the loan, the Petitioner, Respondent No.2 and 3 executed a Share Pledge Agreement dated 26.12.2017 whereby they have agreed to pledge their respective shareholding aggregating to 100% shareholding in Respondent No.1 Company.
 6. Subsequently, the loan account was declared as NPA pursuant to defaults committed in repayment of the EMI's.
 7. Coming back to the issue of alleged illegal gathering held on 09.03.2023, the Petitioner submits that initially the Extraordinary General Meeting of the Company was convened on Thursday, 09.03.2023 at Pravinchandra Gandhi Board Room, 4th Floor, IMC Buildings, IMC Marg, Churchgate, Mumbai-400020. The said meeting was attended by shareholders of the Respondent No.1 company including the nominee directors of the Petitioner and Respondent No. 4 to 7. After the appointment of the chairman of EOGM, the Respondent No.4 to 7 insisted that representatives

of PNB housing should be allowed to attend the meeting even though PNB housing is not a member as defined under Section 2(55) of the Companies Act, 2013. The proposal of Respondent No. 4 to 7 was opposed by the Petitioner.

8. It is the Petitioner's contention since Respondent No. 4 to 7 walked out of the meeting no business came to transacted at the EOGM as the requisite quorum under Article 28 of Articles of Association ("**AOA**") was not present at the meeting, and thus the EOGM came to end. The relevant clause is reproduced hereinbelow for reference:

"28. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

29. The quorum for the meeting of shareholders shall consist of at least one authorized representative of each party present in person or through their duly appointed proxies as prescribed under the Act or the rules and regulations made under the said Act."

9. Since, the proposal to include the representatives of PNB Housing was vehemently opposed by the nominee directors of the Petitioner, despite a complete quorum being present, Respondent No.4 to 7 along with representatives of PNB Housing proceeded to conduct another meeting at

another venue, other than the venue fixed through notice of EOGM. At the said gathering, resolutions were passed to give effect to the agenda of the meeting set out in Notice of EOGM which is removal of nominee directors of the Petitioner and appointment of nominee of directors of PNB Housing i.e. Respondent No.8 to 13 in place thereof. The said appointment is reflected in records of the Registrar of Companies as on 09.03.2023.

10. It is urged that once a meeting has come to end, the agenda circulated vide notice of the EOGM also comes to an end and no meeting can be convened in contravention of the AoA and the Companies Act, 2013. Further, the Ld. Senior Counsel Mr. Seervai has placed reliance on Secretarial Standard on General Meetings wherein clause 3 deals with Quorum and Clause 15 refer to adjournment of meetings.
11. Further, it is submitted that without prejudice the Petitioner addressed an email dated 09.03.2023 making an offer to take over the entire loan facility on 'as is where is basis'.
12. The Ld. Senior Counsel Mr. Janak Dwarkadas appearing for the Respondent No.2 at the outset has taken us through relevant clauses of the Share Pledge Agreement dated 26.12.2017 which clearly indicate that Lender i.e. PNB Housing upon occurrence of default is entitled to exercise voting rights and can further direct the exercise of such rights attached to

the Pledged Shares by the Pledgors i.e. the Petitioner, Respondent No.2 and 3. Further, under Clause 8.1.1 the Lender shall be entitled to attend any general meeting of the Members of the borrower i.e. Respondent No.1 Company or a meeting of any creditors of the Borrower to exercise voting rights.

13. The Pledgors under the clause 11 of said agreement have agreed to execute a Power of Attorney in favor of Lender to secure discharge of obligations under the Share Pledge Agreement. It is argued that the Power of Attorney (“POA”) dated 26.12.2017 to which the Petitioner herein is also a party explicitly stipulates under clause 4 that the said POA is irrevocable. More particularly clause 4 (b) whereby the Lender is appointed on behalf of the pledgor to vote in any shareholder meetings of the borrowers.
14. We have heard and considered the submissions advanced by the Ld. Senior Counsel Mr. Ravi Kadam appearing for Respondent No. 8 to 13. The submissions advanced were on similar lines as that of Mr. Dwarkadas appearing for the Respondent No.2. Therefore, the same is not reiterated for the sake of brevity.
15. Ld. Advocate for Respondent Nos. 14 & 15, on instructions, submits that they are supporting the Petition and the submissions advanced by the Ld. Sr. Advocate for the Petitioner.

16. At this juncture, the interims reliefs sought by the Petitioner are only to protect its interest and rights as a minority shareholder of the company. The Petitioner herein has made out a prima facie case in his favor and the conduct of the Respondents in changing the venue of the meeting and passing resolutions for the removal of nominee directors of the Petitioner and adding the directors of PNB Housing on board of the Respondent No.1 company in absence of the Petitioner at the alleged gathering held on 09.03.2023, further establishes the case of Petitioner.
17. Moreover, clause 15 of Secretarial Standard on General Meetings clearly prescribes that meetings shall adjourned for want of requisite Quorum and if the meeting stands adjourned for the period of less than thirty days, the company shall give a notice of not less than three days to the members of company in such form and manner as particularly detailed therein.
18. The balance of convenience at present lies in favor of the Petitioner and no irreparable harm or damage will be caused to the Respondents if the interim reliefs as prayed for in Clause B and C of Paragraph 1 above are granted to the Petitioner.
19. In the aforesaid backdrop, the parties are directed to maintain status quo to the extent of resolutions passed in the alleged gathering held on 09.03.2023 till the next date of hearing. The Respondents are directed to file their reply

to the Company Petition within a period of two weeks. List this matter on
26.04.2023.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

14.03.2023

Priyal/Vedant

Sd/-

KISHORE VEMULAPALLI

Member (Judicial)